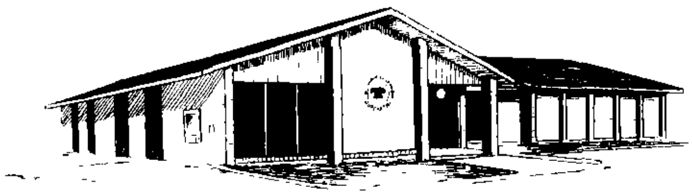

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BULLOCH TELEPHONE COOPERATIVE, INC.
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96-128

November 26, 2003

BY UNITED STATES POSTAL SERVICE

Marlene H Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Rc Bulloch County Rural Telephone Cooperative, Inc
Petition for Waiver of Default Payphone Compensation Requirements
Under Sections 64 1301(a),(d) and (e)

Please find enclosed for filing the original and 4 copies of Bulloch County Rural Telephone Cooperative, Inc 's ("Bulloch") Petition for Waiver of Sections 64 1301(a), (d) and (e)

Also enclosed is an additional copy of this cover letter marked for STAMP AND RETURN in the enclosed self-addressed stamped envelope

Should you have any questions regarding this matter, please call the undersigned at 912 865 1100

Sincerely,

Dennis D Lewis
General Manager

No. of Copies rec'd 4
List ABCDE

DECLARATION OF DENNIS D. LEWIS

I, Dennis D. Lewis, General Manager of Bulloch County Rural Telephone Cooperative, Incorporated in Georgia do hereby declare under penalties of perjury that the information contained in the foregoing "Petition for Waiver" is true and accurate to the best of my knowledge, information and belief.

Dennis D. Lewis
General Manager

Date: November 26, 2003

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Pay Telephone Reclassification and	)	CC Docket No. 96-128
Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

PETITION FOR WAIVER OF SECTIONS 64.1301(a), (d) AND (e)

Bulloch County Rural Telephone Cooperative Incorporated ("Bulloch"), pursuant to Section 1 3 of the Federal Communications Commission's ("FCC" or "Commission") Rules[1], herby requests a waiver of Sections 64 1301(a), 64 1301(d) and 64 1301(e) of the Commission's Rules[2] to exclude Bulloch from the requirement to pay default compensation to payphone service providers. Because Bulloch is an ILEC, Bulloch is included among the universal group of ILECs subject to Section 64 1301 by inclusion of "ILEC" on Appendices A, B and C of the Commission's *Fifth Reconsideration Order* in CC Docket No 96-128[3], Bulloch is currently subject to the requirement to pay default compensation to payphone providers for compensable calls Because Bulloch does not carry compensable calls, Bulloch respectfully requests that the Commission waive the

[1] 47 C F R § 1 3

[2] 47 C F R §§ 64 1301(a), 64 1301(d) and 64 1301(e)

[3] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No 96-128, *Fifth Order on Reconsideration and Order on Remand*, FCC 02-292 (Rel Oct 23, 2002) (*Fifth Reconsideration Order*)

requirement under Sections 64 1301(a), 64.1301(d) and 64.1301(e) of the Commission's Rules for Bulloch to make default payments to payphone service providers

Bulloch is an incumbent local exchange carrier (ILEC) serving approximately 11,000 customers in rural Bulloch County Georgia On September 3, 2003, Bulloch received a letter and invoice from APCC Services, Inc ("APCC") Said letter indicates that APCC is rendering an invoice to Bulloch for payphone compensation owed to the payphone service providers ("PSPs") pursuant to the Commission's "True-Up Order" (*Fifth Reconsideration Order*)

1. A key determination by Commission regarding compensable calls is that an ILEC must carry a call in order to be responsible for payment.

The *Fifth Reconsideration Order* was intended to bring a "measure of finality" regarding the contentious history of payphone compensation. One purpose of the Commission's action was to ensure that payphone service providers (PSPs) receive fair compensation for every call made using their payphones The Commission has concluded that Section 276 requires it to "ensure that per-call compensation is fair, which implies fairness to both sides "[4]

In pursuit of this objective and a fundamental criterion to the Commission's rules regarding payphone compensation was to ensure that local exchange carriers ("LECs") "pay payphone compensation <u>to the extent that they handle compensable payphone calls</u> "[5] This is a threshold criterion that must be satisfied prior to placing a burden for PSP payment on any LEC Absent satisfying this threshold criterion, a carrier would be

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[4] *Fifth Reconsideration Order*, at 82

[5] *Fifth Reconsideration Order*, at 55 (Emphasis supplied)

responsible to pay for a compensable call that it did not handle Clearly such result would not be a fair result for the LEC

The Commission explained how a LEC can handle compensable communications

a When a LEC terminates a compensable call that is both originated within its own service territory and not routed to another carrier for completion,

b When a LEC also provides interexchange service and carries the call as would any other IXC

2. The Commission's default payphone compensation regime for ILECs is based exclusively on RBOC data that does not reflect Bulloch's lack of compensable calls.

Based on at least two data requests initiated by the Commission and directed solely to the RBOCs, the Commission determined that incumbent LECs complete payphone calls that are not routed to other carriers. The RBOC data apparently shows that 2 19 percent of all compensable payphone calls are handled by the RBOCs The Commission also noted that no other incumbent LEC objected to this data The Commission concluded that it is appropriate to allocate to "both RBOC and non-RBOC incumbent LECs a percentage of the calls (2.19%) originating from payphones within their own service territories " Bulloch did not have cause to object to this data because clearly the Commission was directing its efforts at determining the percentage for "carriers" those entities who carry compensable communications. As will be shown below, Bulloch does not carry any compensable calls Thus the application of the allocation percentage in the case of Bulloch is inappropriate.

3. Bulloch never carries compensable calls.

A compensable call is defined by the Commission as a call from a payphone user who calls a toll-free number, dials an access code, or uses a pre-paid calling card without placing any money into the payphone[6] Because of its operation as an access provider, Bulloch does carry any compensable communications All compensable calls originating from payphones within the Bulloch service area are passed on to other carriers who pay interstate or intrastate, as the case may be, originating access charges Any compensable calls terminated by Bulloch within its service area are received from other carriers who pay interstate or intrastate, as the case may be, terminating access charges Thus, Bulloch does not carry individual compensable calls that both originate and terminate within Bulloch's LEC service area or are carried by Bulloch as an IXC that are subject to compensation under the criteria established in the *Fifth Reconsideration Order* for either a LEC or an IXC[7] Any compensable call terminating in Bulloch's service area would have to be an IXC-carried call[8] Assuming that Bulloch handles compensable calls and requiring it to pay for compensable calls that it never handles is not a fair compensation mechanism

4. The Fifth Reconsideration Order provides a mechanism for entities to be removed from the allocation percentage appendices.

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6 *Fifth Reconsideration Order*, at 3

7 *Id*., at 55

8 Bulloch's affiliate, BullochLong Distance is an IXC providing long distance service as a reseller BullochLong Distance is not included on Appendices A, B and C of the *Fifth Reconsideration Order* As a carrier not included on Appendices A, B and C, BullochLong Distance, Bulloch 's IXC affiliate is not subject to default payphone compensation

Appendices A, B and C of the *Fifth Reconsideration Order* list "carrier" allocation percentages for default compensation factors for, respectively, interim access code and subscriber 800 calls (November 7, 1996 through October 6, 1997), intermediate access code and subscriber 800 calls (October 7, 1997 through April 20, 1999) and post-intermediate access code and subscriber 800 calls (April 21, 1999 forward) In the *Fifth Reconsideration Order*, the Commission noted that entities listed on Appendices A, B, or C could file a petition for a waiver with the Wireline Competition Bureau such as the instant waiver request – for exclusion from the Commission's allocation Note 89 states

> Any entity named in our allocation that then receives a request for per payphone compensation from a PSP or other entity may, within ninety (90) days of receiving such a request, file a waiver request with the Wireline Competition Bureau for exclusion from our allocation, with a demonstration that the entity provides no communications service to others [9]

As has been demonstrated above, while Bulloch provides communications services, it never provides compensable communications service to others and is a non-carrier as defined by the *Fifth Reconsideration Order* [10] Accordingly, Bulloch requests within 90 days of receipt of its only request for compensation, that from APCC, that it be removed from the Commission's allocation appendices

5 **Bulloch's petition for waiver meets the Commission's standards for granting a waiver of its rules.**

Under section 1 3 of the Commission's Rules, any provision of the rules may be waived if "good cause" is shown The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy

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9 *Fifth Reconsideration Order*, Note 89

10 *Id* Note 3

objective of the rule in question [11] Payment of payphone compensation by Bulloch absent compensable calls that both originate and terminate within Bulloch's network, whereby Bulloch does not collect any revenue for the call, apart from revenue under the applicable interstate or intrastate access charge regime, would be inconsistent with the public interest. Additionally, payment of compensation under such circumstances would undermine the policy that entities benefiting from the carrying of compensable payphone originating calls should pay compensation to payphone providers Moreover, it would be burdensome and inequitable for Bulloch and, in turn, its customers to bear the cost of default payment compensation when Bulloch carries no compensable calls [12]

CONCLUSION

For the foregoing reasons, Bulloch respectfully requests that the Commission waive Sections 64 1301(a), 64 1301(d) and 64 1301(e) and thereby not include Bulloch among the entities listed on Appendices A, B and C of the *Fifth Reconsideration Order* required to pay default compensation to payphone service providers The requested waiver will serve the public interest by allowing Bulloch to avoid payment of charges for which no related benefit accrues to Bulloch given that Bulloch does not carry payphone originated compensable calls

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[11] Wait Radio v FCC, 418 F 2d 1153 (D C Cir 1969), cert denied, 409 U S 1027 (1972) ("WAIT Radio"), Northeast Cellular Telephone Co v FCC, 897 F 2d 1164, 1166 (D C Cir 1990)

[12] *See* Wait Radio, 418 F 2d at 1159 The petitioner must demonstrate, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest